


Approved for Release

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03/04/08
Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

**HUMAN RESOURCES BULLETIN #078, FY08, U.S.C., "National Defense
Authorization Act for Fiscal Year 2008, Public Law 110-181"**

SUBJECT: Annual Pay Limitation for Overseas Emergency Work

EFFECTIVE DATE: Upon release of this HR Bulletin and retroactive to salary payments payable on or after January 1, 2008.

EXPIRATION DATE: Effective until canceled or superseded.

SUPERSEDES: HR Bulletin FY07-055, "Extension of Annual Pay Limitation for Overseas Emergency Work", dated November 24, 2006, and authorized under the "Fiscal Year 2007 National Defense Authorization Act, Public Law 109-364".

BACKGROUND: In calendar years (CY) 2005, 2006, and 2007, employees performing emergency work in overseas locations in connection with a military operation or an operation in response to a declared emergency were allowed to exceed the biweekly maximum earnings limitation¹. This authority has been extended for CY 2008 via passage of the "National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181.

PURPOSE: The purpose of this Bulletin is to authorize agencies to waive the annual limitation on total basic pay and premium pay and apply an alternative limit of up to \$212,100.00".

CHANGES: In accordance with Section 1101 of Public Law 110-181 ("National Defense Authorization Act for Fiscal Year 2008"), employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location may have an alternative annual earnings limitation applied in lieu of the annual earnings limitation. This means that employees may receive

¹ On November 18, 2004, a Department-wide exception to the biweekly salary cap was authorized for employees performing work in connection with an emergency, its aftermath, or for mission-critical activities. This exception remains in effect until otherwise notified.

premium pay in calendar year 2008 to the extent that such premium pay would not cause the employee's aggregate amount of basic pay and premium pay payable in the calendar year to exceed \$212,100.00. This limitation is applied to premium payments that are "payable" during the 2008 calendar year. That is, payments earned in a pay period for which the pay date falls in the calendar year, or up to and including pay period 24, 2008.

The alternative annual limitation continues to apply to an employee's annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered under this authority. At that point the employee's earnings will again be subject to the biweekly premium pay limitation under 5 U.S.C. 5547, and the employee may receive payments up to the section 5547 biweekly premium pay limitation each pay period until the alternative annual limitation is reached.

Section 1105 does not provide authority to waive the aggregate compensation limitation in 5 U.S.C. 5307, which bars payment of compensation (including premium pay) under title 5 in addition to basic pay to the extent such payment would cause the employee's aggregate annual compensation received in a calendar year to exceed a specified annual rate². Since the section 1105 annual limitation is \$212,100.00, an employee may be entitled to premium pay under section 1105 that cannot be paid during calendar year 2008 due to the section 5307 limitation. In this case, any such excess payments should be deferred until the beginning of calendar year 2009 (See 5 CFR 530.203(f) and 530.204) and are counted toward the 2009 aggregate pay limitation under section 5307. (A deferred payment of premium pay is not considered in applying the applicable 2009 premium pay limitation under 5 U.S.C. 5547 or similar authority).

APPLICABILITY: This HR Bulletin applies to employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in overseas location under the area of responsibility of the Commander of the U.S. Central Command (CENTCOM). The following 27 countries are in the area of responsibility: Djibouti, Egypt, Eritrea, Sudan, Kenya, Ethiopia, Somalia, Jordan, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Pakistan, Iran, Iraq, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan, Seychelles, Syria, and Lebanon. The following conditions must be met for an employee to be eligible:

- (1) The employee is covered by 5 U.S.C. 5547 (dealing with limitations on premium pay).
- (2) The employee is assigned to work in an overseas location under the responsibility of the CENTCOM and remains in that location for at least 42 consecutive calendar days. If the employee meets the 42-day requirement, this limitation may be applied to days before that requirement was met, as long as the employee was performing work in a covered and approved category on those days. The 42-day

² For most employees, this is the rate for level I of the Executive Schedule, or \$191,300.00 in 2008.

period may overlap a calendar year; that is, begin in 2007 and end in 2008, or begin in 2008 and end in 2009.

- (3) The employee performs work in direct support of, or directly related to, a military operation (including a contingency operation).

Note that Djibouti, Eritrea, Sudan, Kenya, Ethiopia, and Somalia are scheduled to be assigned from CENTCONM to the U.S. African Command (AFRICOM) effective October 1, 2008. The provisions of this HR Bulletin will remain in effect for employees in the areas covered by CENTCOM that move under the areas covered by AFRICOM.

PROCEDURES: Before applying the annual salary cap, time and attendance reports (T&As) must first be coded to allow employees to exceed the biweekly salary cap. To effect this change, the T&A report must be coded with a "4" in the RSO/Salary Cap field on the Employee Data Screen of the DOS T&A software or in the T&A Profile of webTA. Note that the following types of premium pay remain subject to the biweekly salary cap when other premium pay entitlements are subject to the annual salary cap: standby duty under 5 USC 5545(c)(1); administratively uncontrollable overtime under 5 USC 5545(c)(2); availability pay for criminal investigators under 5 USC 5545a; and firefighter overtime pay for hours in the regular tour of duty under 5 USC 5545b. Since the National Finance Center does not track the annual salary cap, agencies will have to track premium pay earned to ensure employees do not exceed the new annual cap.

Waivers resulting in receipt of additional premium pay that is normally creditable as basic pay for retirement (or any other purpose) is not to be considered basic pay and may not be used in computing a lump-sum payment for accumulated and accrued annual leave under 5 USC 5551.

REFERENCES: §1101 of Public Law 110-181, 5 U.S.C. 5547, 5 U.S.C. 5551, 5 U.S.C. 5307

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